Supreme Court, U.S.
FILED

97 • 549 SEP 2 6 1997

No. _____
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1997

ESTATE OF DAVID MILLER

Petitioners,

v.

BOARD OF ASSESSORS OF THE TOWN OF RAYNHAM

Respondents.

Petition For Writ Of Certiorari
To The Massachusetts Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

Fred Davis
353 Bryant Street
Malden, Massachusetts 02148
(781) 322-8223

25pp

ISSUES PRESENTED

I.

Should this Court grant Certiorari to protect the petitioner's rights as set forth under the United States Constitution Amendments V and XIV.

Should this Court grant Certiorari to restore the petitioner's rights as set forth under Massachusetts Declaration of Rights Article XI, Massachusetts Rules of Appellate Procedure Rule 9 (a). Federal Civil Rights Act.

II.

United States Constitution Amendment V: states in pertinent part: "cannot be deprived of life, liberty or property without due process of law".

III.

United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law: nor deny to any person within its jurisdiction the equal protection of the law".

IV.

Massachusetts Declaration of Rights: Article XI: remedy by recourse of the laws: obtaining of right and justice, completely promptly. "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it: Completely, and without denial: promptly, and without delay...."

V.

Massachusetts Rules of Appellate Procedure Rule 9(a) Assembly, the clerk of the lower court as soon as may be after the filing of the notice of appeal place together all the original papers including the exhibits filed in the lower court, together with such papers as thereafter become a part of the record.....".

VI.

Petitioner's property valuation is far in excess of property in the Broadway Raynham area.

VII.

There is a conflict of interest issue which involves Roger Howlett, who is Chairman of the Board of Assessors for the Town of Raynham, who also operates a Real Estate Business in the Town of Raynham.

VIII.

The Appellate Tax Board erred in failing to make a decision for the year 1994, in which evidence, and witnesses testified on this issue.

IX.

The Court erred in its decision based on the facts and evidence presented to the court.

X.

The public interest in the Town Raynham is not uniform and equitable.

TABLE OF CONTENTS

	Page
OPINIONS	1
JURISDICTION.....	1
UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	2
ARGUMENT.....	4
REASONS FOR GRANTING THE PETITION.....	4
I. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER FROM BEING DEPRIVED OF HIS CONSTITUTIONAL RIGHTS AS SET FORTH IN THE UNITED STATES CONSTITUTION.....	4
II. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER'S CIVIL RIGHTS AS HE WAS DISCRIMINATED AGAINST BECAUSE OF HIS AGE AND RELIGION.....	6
III. CERTIORARI SHOULD BE GRANTED TO PROTECT PETITIONER FROM BEING DEPRIVED OF HIS RIGHT IN OBTAINING JUSTICE AS SET FORTH IN MASSACHUSETTS DECLARATION OF RIGHTS ARTICLE XI.....	7

TABLE OF CONTENTS
(continued)

		Page
IV.	CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER'S RIGHT AS SET FORTH IN THE MASSACHUSETTS RULE OF CIVIL APPELLATE PROCEDURE RULE 9 (a).....	8
V.	CERTIORARI SHOULD BE GRANTED BECAUSE THE INFERIOR COURTS ERRED IN LAW BASED ON THE FACTS, EVIDENCE AND TESTIMONY OF WITNESSES.....	9
VI.	CERTIORARI SHOULD BE GRANTED BECAUSE THE APPELLATE TAX BOARD ERRED IN FAILING TO ADDRESS THE CONFLICT OF INTEREST ISSUE WHICH INVOLVES ROGER HOWLETT, CHAIRMAN OF THE ASSESSORS FOR THE TOWN OF RAYNHAM.....	12
VII.	CERTIORARI SHOULD BE GRANTED BECAUSE THE PUBLIC INTEREST IS INVOLVED.....	13
CONCLUSION.....		14

UNITED STATES CONSTITUTION

	Page
AMENDMENT V.....	2,4,5
AMENDMENT XIV.....	2,5

OTHER

Page

MASSACHUSETTS DECLARATION OF RIGHTS
ARTICLE XI..... 7

MASSACHUSETTS RULES OF CIVIL APPELLATE
PROCEDURE RULE 9(a)..... 8

Petitioner, Fred Davis, heir to the Estate of David Miller, respectfully prays that a writ of certiorari issue to review decision of the Massachusetts Supreme Judicial Court and grant him the following relief: That the Estate of David Miller's real estate located in the Broadway area be valued honestly at the same rate as other property in that area, and refunds for the years 1994 and 1995.

The honorable court is requested to correct the discrimination inflicted upon the estate along with being deprived of its constitutional rights deprived of justice, and other statutes.

OPINIONS BELOW

The Appellate Tax Board's decision was for the appellee attached (App. p. 1).

The Appeals Court's affirmed the Appellate Tax Board's decision attached (App. P. 2).

The Massachusetts Supreme Judicial Court denied Further Appellate Review attached (App. P. 3).

JURISDICTION

July 3, 1997, the Massachusetts Supreme Judicial Court denied Further Appellate Review.

This petition is filed within the 90 days of the Massachusetts Supreme Judicial Court's

decision.

This Court's jurisdiction is invoked under 28 United States Code.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

"cannot be deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the law".

STATEMENT OF THE CASE

Petitioner filed tax rebatements for two pieces of property in the Broadway area in the Town of Raynham.

Petitioner's tax rebatements were denied by Roger Howlett, Chairman of the Board of Assessors.

Roger Howlett is engaged in the Real Estate business in the Town of Raynham attached (App. p. 6).

There is a conflict of interest between being a Chairman of the Board of Assessor for the Town of Raynham while being engaged in the Real Estate business.

Researching the facts before appealing the denial of the abatements to the Appellate Tax Board, it was discovered that property in the same area as that of the Estate of David Miller was much less valuated than the estate's properties and the other properties had more land and the property was in better condition than the properties of the Estate of David Miller.

Therefore, based on the foregoing facts the Estate filed an appeal with the Appellate Tax Board for the years 1994 and 1995.

February 1, 1996 a hearing was held on the overevaluation of the two properties for the years 1994 and 1995 attached (App. p. 9 and App. p. 10).

February 27, 1996, the Appellate Tax Board rendered a decision for the year 1995, however, no decision was rendered for the year 1994 attached (App. p.1).

The estate appealed the Appellate Tax Board's decision to the Appeals Court which was denied.

The Board of Assessors for the Town of Raynham did not oppose the appeal in the Appeals Court.

Fred Davis discovered after the decision from the Appeals Court that Richard B. Willis, Clerk of the Appellate Tax Board obstructed justice and did not forward the seven photographs to the Appeals Court, instead he gave the photographs to the Town of Raynham, he only forward one document to the Appeals Court attached (App. p. 4).

The action was appealed to the Massachusetts Supreme Court for Further Appellate Review which was denied without any written decision or oral argument.

The Board of Assessors for the Town of Raynham did not oppose the appeal in the Massachusetts Supreme Judicial Court.

Now the issues are before this Honorable Court.

ARGUMENT

REASONS FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER FROM BEING DEPRIVED OF HIS CONSTITUTIONAL RIGHTS AS SET FORTH IN THE UNITED STATES CONSTITUTION

The United States Constitution Amendment V: states in pertinent part: "cannot be deprived of life, liberty, or property, without due process of law".

The United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

Petitioner was deprived of his Constitutional Rights as set forth in the United States Constitution Amendments V and XIV, which guarantees the petitioner the right to due process of law and equal protection of the law.

Due process of law and equal protection of the law is a fundamental constitutional guarantee that no state shall deprive any person the right to due process of law and equal protection of the law.

Petitioner paid filing fees to the Appellant Tax Board to have hearings and decisions on over valuations for the year 1994 and 1995, however, the Appellate Tax Board did not render a decision for the year 1994, and they only made a decision for the year 1995 attached (app. p. 1).

The Appeals Court did not address the issue that there was no decision rendered for the year 1994.

Ms. Lomans, who conducted the hearing would not let the petitioner ask any questions to Roger Howlett, who was representing the respondent, although Mr. Howlett started to answer the question posed to him, Ms Loman quickly said, "don't answer that".

Ms. Lomans continuously throughout the hearing would stop the hearing and have private meetings with Roger Howlett, Chairman of the Board of Assessors for the Town of Raynham and other individuals with him.

The petitioner was excluded from these meetings.

One could clearly see that after returning from these secret meetings that Ms. Lomans had settled everything in favor of the respondent.

Petitioner's Constitutional Rights were deprived of due process of law and equal protection of law.

II. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER'S CIVIL RIGHTS AS HE WAS DISCRIMINATED AGAINST BECAUSE OF HIS AGE AND RELIGION

The petitioner was discrimininated against because of his age and religion.

All individuals younger and not of the same religion were allowed to question witnesses and attend meetings with the opposing parties except the petitioner.

The petitioner did not receive an impartial hearing, because of his age and religion.

Ms. Lomans conducted a hearing that was a complete case of lopsided justice.

III. CERTIORARI SHOULD BE GRANTED TO PROTECT PETITIONER FROM BEING DEPRIVED OF HIS RIGHT IN OBTAINING JUSTICE AS SET FORTH IN MASSACHUSETTS DECLARATION OF RIGHTS ARTICLE XI

Massachusetts Declaration of Rights Article XI: remedy by recourse of the laws; obtaining of right and justice, completely promptly, "Every subject of the commonwealth ought to find a certain remedy, by have recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it: Completely, and without denial: promptly, and without delay..."

The petitioner had the right to obtain justice, however, this was not the case.

Petitioner presented evidence and had witnesses testified to the fact that the properties were over valuated.

Petitioner's evidence was not forward to the Appeals Court nor was the testimony of the petitioner's witnesses forward to the Appeals Court.

In addition, a decision for the year 1994, was not rendered.

IV. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONER'S RIGHT AS SET FORTH IN THE MASSACHUSETTS RULES OF CIVIL APPELLATE PROCEDURE RULE 9 (a)

Massachusetts Rules of Appellate Procedure Rule 9 assembly of the record: Exhibits (a) ASSEMBLY, the clerk of the lower court as soon as may be after the filing of the notice of appeal shall place together all the original papers including the exhibits filed in the lower court, together with such other papers as thereafter becomes a part of the record pursuant to rule 8. The paper shall be plainly marked with the number assigned to the lower court preceded by the letter "EXH". The clerk shall append to the record a list of the documents correspondingly numbered and identified with reasonable definiteness.

Pursuant to the Massachusetts Rules of Appellate Procedure Rule 9, it is the responsibility of the clerk to assembly the record, however, he failed to perform his duties and obstructed justice.

The petitioner discovered after the decision from the Appeals Court that Richard B. Willis, Clerk of the Appellate Tax Board obstructed justice and did not forward the photographs to the Appeals Court instead he gave the photographs to the Town of Raynham.

If, Mr. Willis could obstruct justice and not forward the photographs to the Appeals Court and

give the photographs to the Town of Raynham, the petitioner has no way of knowing what he did with the rest of the court record.

The facts indicate that there is a conspiracy between Richard B. Willis and the Town of Raynham.

The Town of Raynham did not oppose the appeal in the Appeals Court and they did not oppose the appeal in the Massachusetts Supreme Judicial Court.

V. CERTIORARI SHOULD BE GRANTED BECAUSE THE INFERIOR COURTS ERRED IN LAW BASED ON THE FACTS, EVIDENCE AND TESTIMONY OF WITNESSES

The Appeals Court erred in law in their decision.

In the petitioner's Appendix which was submitted to the Appeals Court there were 14 pages of documents including print outs of all properties in the Broadway area, which clearly shows that the Miller Properties are grossly over valuated. Excerpts from these print outs attached (App. P. 7 and App. P. 8).

The property located at 1667 Broadway Raynham and wet land also located at Broadway is grossly over valuated by the Town of Raynham.

The wet land also includes on this land an easement that the Commonwealth of Massachusetts has for its drainage system.

The Commonwealth of Massachusetts pays no compensation for this easement.

There is no water meter and the water has been shut off from the sidewalk at 1667 Broadway since 1989.

In the wet land there is no water connection to the street, however, taxes for water on both properties are illegally being placed upon the Estate of David Miller.

Both properties are over valuated in relation to properties located at Broadway Raynham.

The grossly over valuation of Miller's Property at 1667 Broadway, is $91,000.00 and the over valuation of the wet land is $44,600.00 for the year 1994.

In spite, of the fact, that the house located at 1667 Broadway was completely destroyed by fire the valuation was increased to an evaluation of $94,400.00 and the wet land was over valued at $44,600.00 for the year 1995.

The property located at 1667 Broadway has been vacant and boarded up since the death of David Miller in September of 1989.

The property since September 1989. has been in a complete deplorable condition, infested with rats and in an uninhabitable condition.

The foundation has fallen apart, the sill is completely rotted and there is no floor in the cellar. The floor consists of just dirt.

House located at 1701 Broadway, house is in perfect condition occupied valuated at $57,100.00 and consists of 41,817 square feet which is approximately $1.34 a square foot while on the other hand Miller's land is over valuated at approximately $2.70 square foot attached (App. p. 7).

Property located at 1701 cesspool does not have to be updated with the conditions of Title V. Miller's cesspool must be updated at a cost between $20,000.00 to $30,000.00.

House located at 1680 Broadway includes garages perfect condition occupied, in inhabitable condition and property is being used for business and the land is being used for the dumping of hazardous waste the valuation of $45,400.00 which is only $4,000.00 for a house in perfect condition.

Land at 1680 is valued at approximately $1.69 a square foot while on the other hand the Miller's land is over valuated at approximately $2.70 a square foot attached (App. P. 7)

House located at 1635 Broadway house is in perfect condition occupied valued at $48,000.00 only $6,000.00 more for a house in perfect condition and inhabitable , in addition, land consists of approximately two acres valued at $60,000.00 which is approximately $30,250.00 per acre.

Millers's property is less than one-half an acre and is overvalued at $53,000.00 attached (App. p. 7).

Land next to Miller's owned by (Burstyn contains 3.08 acres (App. P. 7) is valuated at $43,200.00. Miller's land contains 1.20 acres and is over valuated at $44,600.00.

Land on Broadway owned by Nohos contains 2.21 acres valued at $49,700. attached (App. P. 7). Miller's land contains 1.20 acres and is over valuated at $44,600.00.

Land on Broadway owned by Hill 3 acres valued at $4,500. (App. P. 7) Millers land contains 1.20

and is over valuated at $44,600.00.

Land on Broadway owned by Riley one acre valuated at $1,500.00 (App. P.8). Miller's land is .20 acre more and his land is valuated $44,600.00.

The Appeals Court had all these print-outs to review before making their decision.

Therefore, based on the foregoing evidence the Appeals Court erred in law in its decision and the Massachusetts Supreme Judicial Court erred in law when they denied Further Appellate Review.

VI. CERTIORARI SHOULD BE GRANTED BECAUSE THE APPELLATE TAX BOARD ERRED IN FAILING TO ADDRESS THE CONFLICT OF INTEREST ISSUE WHICH INVOLVES ROGER HOWLETT, CHAIRMAN OF THE ASSESSORS FOR THE TOWN OF RAYNHAM

The Appellate Tax Board erred in failing to address the conflict of interest issue involving Roger Howlett, Chairman of the Assessors for the Town of Raynham.

Roger Howlett is Chairman of the Board of Assessors in the Town of Raynham and is also engaged in the Howlett Real Estate in the Town of Raynham attached (App. P. 6).

Before the Appellate Tax Board Mr. Howlett stated that he was engaged in the Real Estate business in the Town of Raynham.

Mr. Howlett is in a position to under valuate property that he sells or has an interest in

the property.

The facts clearly show that this is the case.

Mr. Howlett is a public offical for the Town of Raynham and he has a duty to perform his duties in the public interest, this is not the case,

Mr. Howlett has a private precuniary interest in doing business in the Town of Raynham selling real estate.

The facts clearly show that there is a conflict of interest selling real estate in Raynham being Chairman of the Board of Assessors for the Town of Raynham.

VII. CERTIORARI SHOULD BE GRANTED BECAUSE THE PUBLIC INTEREST IS INVOLVED

The valuation in the Town of Raynham on Real Estate is not uniform and equitable.

There are valuations for some properties that is not uniform and equitable.

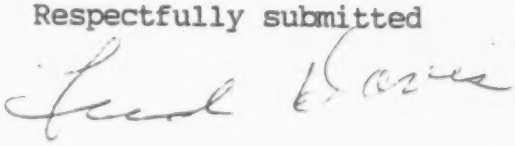
There are valuations for some properties that are much less than compared to similar properties that are on the other hand over valuated.

Some property owners in the Town of Raynham are being ripped off while others are paying less taxes because of low valuations similar to real estate in which others are being ripped off with grossly over valuations.

CONCLUSION

WHEREFORE, Petitioner, Fred Davis respectfully prays that a Writ of Certiorari issue to review the inferior courts' decisions and correct the miscarriage of justice inflicted upon the Estate of David Miller.

Respectfully submitted



Fred Davis
353 Bryant Street
Malden, Ma 02148
(781) 322-8223

APPENDIX

APP. 1

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

Docket Nos. 231739,231740
ESTATE OF DAVID MILLER,
Appellant

BOARD OF ASSESSORS OF THE TOWN OF RAYNHAM,
Appellee

DECISION

Decision for the appellee

APPELLATE TAX BOARD

s/John J. Wolf, Acting Chairman

Attest: s/Allan L. Gold, Asst. Clerk

Date February 27, 1996

Location: 1667 and Broadway
year 1995

APP. 2

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

96-p-430

FRED DAVIS, administrator, 1/

vs.

BOARD OF ASSESSORS OF RAYHNHAM,

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Where the appellant failed to create and assemble a record sufficient for us to decide the case, we decline to disturb the board's decision. Board of Assessors of Norwood v. Barton 384 Mass. 699, 700-701 (1981)

Decision of the Appellate Tax Board affirmed

s/ Nancy Turck Foley, Clerk

Entered: May 14, 1997

1/ of the estate of David Miller

APP. 3

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

1412 Courthouse, Boston, Massachusetts 02108
(617) 557-1020

Estate of David Miller
P.O. Box 721
Everett, Ma 02149

RE: Docket No. FAR-09212

FRED DAVIS, administrator,
vs.
BOARD OF ASSESSORS OF RAYNHAM

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on July 3, 1997, the above-captioned application for Further Appellate Review was denied.

Jean M. Kennett, Clerk

Dated: July 3, 1997

To: Estate of David Miller
Board of Assessors Raynham

APP. 4

COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board
Leverett Saltonstall Building, Government Center
100 Cambridge Street
Boston, Massachusetts 02203

March 29, 1996

David Miller Estate
c/o Fred Davis
P.O. Box 721
Everett, Ma 02149

Re: Estate of David Miller vs. Raynham Board of Assessors

Docket Nos. 231739,231740

Dear Sir:

Enclosed please find exhibits listed below in the above-entitled appeal

Exhibits 1

Very truly yours,
s/Richard B. Willis
Clerk of the Board

KM

Trial Court Appellate Tax Board

County Suffolk Trial Court #231739 & 231740

Estate of David Miller

vs.

Board of Assessors of the Town of Raynham

Appearances

For Plaintiff:

Fred Davis
P.O. Box 721
Everett, Massachusetts 02149

For Defendant:

Roger Howlett
Raynham Board of Assessors
Town Hall
Raynham, Massachusetts 02767

Nature of case: Overvaluation
Decision for defendant
Appeal by plaintiff

March 7, 1996 s/Alan L. Gold, Asst. Clerk

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- **New Construction**
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- **Residential**
- **Appraisals**
- **Industrial**
- **Financing**
- **Land**

823-9100

108 North Main Street, Raynham Ma
(across from Johnsons Pond)

EXCERPTS FROM TOWN OF RAYNHAM'S PRINT-OUT OF THE BOARD OF ASSESSORS VALUATION PROPERTY IN THAT TOWN DATED JANUARY 12, 1995

Property of David Miller		
1667 Broadway		
Single family		
1960 Square feet of land	valuation	$53,000.
Building	valuation	41,400.
Total valuation		$94,400.
Property of David Miller		
Broadway		
Land 1.20 acres	valuation	$44,600.
Property of Nohos, Ilias		
and Nohos, Chrisoula		
2.21 acres (Broadway)	valuation	$49,700.
Property of Lenitin, Peter		
A. Jr. and Lenitin, Jeanne R.		
1701 Broadway		
Single family		
41,817 Square feet of land	valuation	$56,000.
Building		$57,100.
Property of Raymond, David		
and Raymond, Lisa		
1680 Broadway		
32,670 Square feet of land	valuation	$55,100.
Single Family		
Building		$45,400.
Property of Hill,Frances R.		
Broadway		
3 acres of land	valuation	$04,500.
Property of Morris & Ira		
Burstyn, Aron & Rhoda		
Broadway		
3.08 acres of land	valuation	$43,200.

EXCERPTS FROM TOWN OF RAYNHAM'S PRINT OUT OF THE BOARD OF ASSESSORS VALUATION PROPERTY IN THAT TOWN DATED JANUARY 12, 1995

(continued)

Property of Riley, Francis
Broadway
one acre of land valuation $01,500.00.

App. 9

THE COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

January 11, 1996

Re: ESTATE OF DAVID MILLER vs RAYNHAM
DOCKET NO. F231739-94-PRO

The above-entitled appeal has been scheduled for hearing at 9:30 AM on Thursday February 01, 1996 at: 100 Cambridge Street 10th Floor Rm. 1010 Boston, Ma 02202

at which time you will be required to appear with your evidence and witnesses, (if any), and from day to day thereafter until these appeals have been heard. All appeals pending on the same property will be consolidated.

Any conference for the purpose of settlement must be arranged between the parties, themselves and concluded **PRIOR TO THE DATE SET FOR HEARING.** If the parties come to an agreement, a withdrawal form must be filed for each docket number before the date assigned for hearing.

Continuances shall be considered only upon written request, stating the cause and agreed date certain.

Very truly yours,
s/Rachel Cosit

App. 10

THE COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

January 11, 1996

ESTATE OF DAVID MILLER
FRED DAVIS
P.O. BOX 721
EVERETT, MA 02109

Re: ESTATE OF DAVID MILLER vs RAYNHAM
Docket No. F231740-95-PRO

The above-entitled appeal has been scheduled for hearing at 9:30 AM on Thursday February 01, 1996 at: 100 Cambridge Street 10th Floor, Rm. 1010 Boston, Ma 02202

at which time you will be required to appear with your evidence and witnesses, (if any), and from day to day thereafter until these appeals have been heard. All appeals pending on the same property will be consolidated.

Any conference for the purpose of settlement must be arranged between the parties, themselves and concluded **PRIOR TO THE DATE SET FOR HEARING.** If the parties come to an agreement, a withdrawal form must be filed for each docket number before the date assigned for hearing.

Continuances shall be considered only upon written request, state the cause and agreed date certain.

Very truly yours,
s/Rachel Coit